



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 21, 1991

Mr. Robert E. Diaz
Assistant City Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR91-436

Dear Mr. Diaz:

You ask whether a copy of a 911 emergency call received, recorded and transcribed by the City of Arlington is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13654.

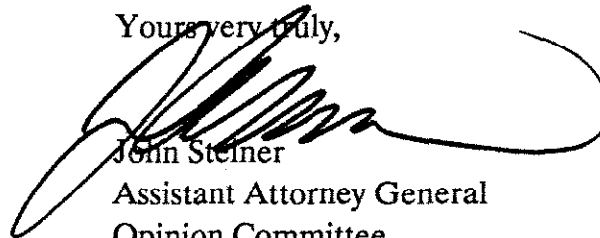
We have considered the exception you claimed, specifically common-law privacy as incorporated into the Open Records Act by section 3(a)(1), and have reviewed the documents at issue. We have also considered the letter submitted with respect to this matter pursuant to section 7(c) of the Open Records Act by the daughter of the person who placed the 911 call in question. Regrettably, we are constrained to conclude that you must release the requested information.

The common-law right of privacy was first recognized by the Texas Supreme Court in 1973. *Billings v. Atkinson*, 489 S.W.2d 858 (Tex. 1973). The applicability of this doctrine to the Open Records Act was recognized in 1976. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert denied, 430 U.S. 931 (1977). However, in 1979, a Texas court determined that Texas would follow the view of the majority of American jurisdictions that the common-law right of privacy is purely personal and terminates upon the death of a person whose privacy is invaded. *Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489 (Tex. Civ. App.-- Texarkana 1979 writ ref'd n.r.e.). Accordingly, Texas common law currently affords no remedy for a person based on the invasion of the privacy of a deceased relative. *Id.*

One cannot help feeling great sympathy for the position of the family of the individuals who were the subjects of the 911 call in question. However, the Open Records Act requires release of all information held by a governmental body unless the information is specifically made confidential or excepted from release under section 3 of the Act. As neither the legislature nor Texas common law has made the kind of information in question confidential, and as the City of Arlington has asserted no discretionary exception under section 3 of the Act, we are compelled to find that the information in question is public.

Because case law resolves your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-436.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/lb

Ref.: ID# 13654, 13707

cc: Patricia Arico
ABC News 20/20
157 Columbus Avenue - 2nd Floor
New York, New York 10023

Mrs. Ann Tennison
3423 Steeplechase Trail
Arlington, Texas 76016